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Notes

DAILEY v. NATIONAL HOCKEY LEAGUE: THE IMPACT OF ERISA'S EXCLUSIVE FEDERAL JURISDICTION ON THE APPLICABILITY OF THE PRINCESS LIDA DOCTRINE IN AN INTERNATIONAL SPORTS CONTEXT

I. INTRODUCTION

International law is a body of rules governing the relations between nations.¹ Nations must abide by the rules of international law in order to co-exist harmoniously.² The doctrine of comity is one such rule of international law.³ The United States Supreme Court described comity as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws."⁴ Thus comity may require one nation to yield when there is a conflict between courts in different countries.⁵

In *Princess Lida of Thurn & Taxis v. Thompson*,⁶ the Supreme Court held that a federal court may not exercise jurisdiction over an action for the administration of a trust if the plaintiff has a pending suit over the same trust in state court.⁷ The *Princess Lida* holding demonstrates that there are times when a federal court must not exercise jurisdiction although it is otherwise authorized to exercise jurisdiction.⁸ In contrast to *Princess Lida*, the Employee Retirement Income Security Act (ERISA)⁹ provides that federal courts

1. International Law: General Nature, 1 HACKWORTH DIGEST § 1, at 1; see also International Law: General Nature, 1 WHITEMAN DIGEST § 1, at 1.

2. See Hackworth, *supra* note 1, at 2-3.

3. See Whiteman, *supra* note 1, at 4.

4. *Hilton v. Guyot*, 159 U.S. 113, 164 (1895).

5. For a discussion of yielding jurisdiction in the interest of comity, see *infra* notes 77-81, 149-54 and accompanying text.

6. 305 U.S. 456 (1939).

7. *Id.* at 467-68. For a further discussion of *Princess Lida*, see *infra* notes 49-85 and accompanying text. Courts have also applied the *Princess Lida* doctrine to disputes involving a foreign court. *Chesley v. Union Carbide Corp.*, 927 F.2d 60, 66 (2d Cir. 1991).

8. See *Crawford v. Courtney*, 451 F.2d 489, 492 (4th Cir. 1971) (stating that application of *Princess Lida* is compulsory).

9. Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 (1988).

have exclusive jurisdiction over certain disputes and, therefore, must exercise jurisdiction over disputes involving the administration of a trust.¹⁰

ERISA does not address how a dispute over the administration of a trust benefiting foreigners and United States citizens is treated under ERISA's nearly complete grant of exclusive federal jurisdiction.¹¹ A prime example of a trust that covers foreigners and United States citizens is an international sports league's pension plan.¹² If the participants in the international sports league include United States citizens and foreign nationals, the league's pension plan would apply to the citizens of many countries, including the United States. As a result, there are several legal forums available to settle a dispute over the same pension plan.¹³ Plaintiffs may wish to have a dispute over a league pension plan settled in different forums, creating the possibility that conflicting orders could be issued.¹⁴

In *Dailey v. National Hockey League*,¹⁵ the United States Court of Appeals for the Third Circuit decided a jurisdictional dispute over the National Hockey League's pension plan.¹⁶ A suit over the same plan was filed in Canada before the *Dailey* action was commenced.¹⁷ Because the *Dailey* plaintiffs alleged ERISA violations, the Third Circuit had to decide whether it had jurisdiction under ERISA or

10. For a discussion of exclusive federal jurisdiction provisions in ERISA, see *infra* notes 86-118 and accompanying text. For a discussion of ERISA in general, see BARBARA J. COLEMAN, *PRIMER ON ERISA* (3d ed. 1989) and JOHN H. LANGBEIN & BRUCE A. WOLK, *PENSION AND EMPLOYEE BENEFIT LAW* (1990).

11. ERISA does not, however, cover plans maintained outside the United States primarily for the benefit of nonresident aliens. See ERISA, 29 U.S.C. § 1003(b)(4) (1988).

12. The National Hockey League and Major League Baseball are two examples of international sports leagues with pension plans.

13. For instance, a Canadian player who plays for a team located in the United States could file suit in either Canada or the United States.

14. For examples of other situations where conflicting orders may be granted, see *Yonkers Racing Corp. v. Yonkers*, 858 F.2d 855 (2d Cir. 1988), *cert. denied*, 489 U.S. 1077 (1989); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 501 F.2d 383 (4th Cir. 1974) (per curiam); *United States v. Michigan*, No. 77-71100, 1989 WL 155689 (E.D. Mich. Nov. 7, 1989); *Pumpelly v. Cook*, 106 F.R.D. 238 (D.D.C. 1985); *Common Cause v. Judicial Ethics Comm.*, 473 F. Supp. 1251 (D.D.C. 1979).

15. 987 F.2d 172 (3d Cir. 1993), *rev'g* 780 F. Supp. 262 (D.N.J. 1991), *cert. denied*, 114 S. Ct. 67 (1993).

16. *Dailey*, 987 F.2d at 173. For a discussion of the facts in *Dailey*, see *infra* notes 20-47 and accompanying text.

17. *Bathgate v. National Hockey League Pension Soc'y*, No. RE 785/91, 1992 Ont. C.J. LEXIS 1830 (Ont. C.J. Oct. 21, 1992). The Canadian suit was a representative action, the Canadian equivalent of a class action. *Dailey*, 987 F.2d at 174.

lacked jurisdiction under the *Princess Lida* doctrine.¹⁸ The Third Circuit held that *Princess Lida* controlled the issue and dismissed the case.¹⁹

This Note discusses *Princess Lida* and ERISA's exclusive federal jurisdiction. First, this Note will demonstrate that the *Princess Lida* doctrine has become a deeply entrenched principle in the United States court system. Second, this Note will discuss how courts have not opposed dismissing cases even though the court had exclusive federal jurisdiction. Third, this Note will analyze whether the Third Circuit properly applied the *Princess Lida* doctrine to dismiss *Dailey*. Finally, this Note will discuss *Dailey's* impact on future cases involving ERISA and foreign jurisdictions.

II. FACTS

The National Hockey League (NHL) consists of professional hockey teams from the United States and Canada.²⁰ The NHL's players, coaches and administrators are natives of the United States, Canada and many other countries.²¹ Although many of the teams are located in the United States, more than fifty percent of the players on the teams located in the United States are foreign nationals.²²

18. *Dailey*, 987 F.2d at 177.

19. *Id.* at 178.

20. The teams located in the United States are the: Anaheim Mighty Ducks, Boston Bruins, Buffalo Sabres, Chicago Blackhawks, Dallas Stars, Detroit Red Wings, Florida Panthers, Hartford Whalers, Los Angeles Kings, New Jersey Devils, New York Islanders, New York Rangers, Philadelphia Flyers, Pittsburgh Penguins, St. Louis Blues, San Jose Sharks, Tampa Bay Lightning and Washington Capitals. The teams located in Canada are the: Calgary Flames, Edmonton Oilers, Montreal Canadians, Ottawa Senators, Quebec Nordiques, Toronto Maple Leafs, Vancouver Canucks and Winnipeg Jets.

Anaheim, Florida, San Jose, Tampa Bay and Ottawa were not member clubs of the NHL at the time *Dailey* was filed. Additionally, the Dallas Stars were called the Minnesota North Stars when both suits were filed. See Kevin Allen, *A Look at Prospective Draftees*, USA TODAY, May 30, 1991, at C8; Jim Kelley, *Changes for '93-94 Should Improve Regular Season*, BUFF. NEWS, Oct. 5, 1993, at 6; Paul Newman, *Ice Hockey: Dallas Upbeat About Move*, DAILY TELEGRAPH, Oct. 6, 1993, at 36; Robyn Norwood, *Bill for Ducks' Opening Show Estimated at \$450,000*, L.A. TIMES, Oct. 6, 1993, at A1.

21. See Judith Waldrop, *Hot-Weather Hockey*, AM. DEMOGRAPHICS, Oct. 1993, at 4.

22. See generally PHILADELPHIA FLYERS YEARBOOK (1993-94). The Philadelphia Flyers are an example of a United States team with players from different countries. At the beginning of the 1993-94 season, the Flyers had players from Canada, Czechoslovakia, the former Soviet Union and Sweden. *Id.* The Flyers had no United States citizens and only five Flyers lived in the United States. *Id.*

In 1967, the NHL formally established the National Hockey League Pension Plan and Trust (NHL Plan).²³ The NHL named the National Hockey League Pension Society (Pension Society) trustee of the NHL Plan.²⁴ The NHL Plan specified that all surplus plan funds and assets were to be used for the exclusive benefit of plan participants.²⁵ Players and their respective teams made contributions to the pension plan until 1969.²⁶ After 1969, only the teams made financial contributions to the NHL Plan.²⁷

A substantial portion of the pension funds were invested in a group annuity contract with Manufacturer's Life Insurance Company (Manulife).²⁸ The contract stated that Manulife would attempt to generate surplus funds for the pension plan.²⁹ From its establishment in 1967 until 1982, no significant changes were made to the NHL Plan.³⁰

23. *Dailey*, 987 F.2d at 174. The NHL established an unofficial pension plan in 1947 with the National Hockey League Pension Society named as trustee. *Bathgate v. National Hockey League Pension Soc'y*, No. RE 785/91, 1992 Ont. C.J. LEXIS 1830, at *6 (Ont. C.J. Oct. 21, 1992).

24. *Dailey v. National Hockey League*, 780 F. Supp. 262, 264 (D.N.J. 1991). The Pension Society's main objective was to purchase annuity contracts and to pay pensions to players, coaches and trainers employed by the NHL's member clubs. *Bathgate*, 1992 Ont. C.J. LEXIS 1830, at *3.

25. *Dailey*, 987 F.2d at 174. Article 3.12 of the NHL Plan provided: As of April 30, 1967 the Trustee shall allocate surplus funds, if any, among the accounts of participating Players, Protected Players, or Accommodation Service Players Thereafter, at five year intervals, the Trustee shall allocate surplus funds, if any, among the accounts of participating Players, Protected Players and Accommodation Service Players who had been participants at any time since the immediately prior allocation of surplus funds.

Bathgate, 1992 Ont. C.J. LEXIS 1830, at *30-31. Article 4.01(3) further provides: [N]o amendment shall provide for the use of funds or assets held under the Club Pension Plan other than for the benefit of Participants, former Participants or their beneficiaries, and no funds contributed or assets of the Club Pension Plan shall ever revert to or be used or enjoyed by the League or Member Clubs until after satisfaction of all liabilities under the Club Pension Plan to Participants, former Participants and beneficiaries. *Id.* at *33-34 (emphasis omitted).

26. *Dailey*, 987 F.2d at 174. In 1969, the National Hockey League Players' Association (NHLPA) and the NHL teams agreed to no longer require the players to contribute to the NHL Plan. *Bathgate*, 1992 Ont. C.J. LEXIS 1830, at *37.

27. *Bathgate*, 1992 Ont. C.J. LEXIS 1830, at *37. The players were excluded from sitting on the Pension Society's Board of Directors because they no longer contributed to the NHL Plan. *Id.*

28. *Dailey*, 780 F. Supp. at 264.

29. *Id.* The contract defined surplus funds as the rate of return on the funds deposited in excess of the internal rate of return. *Id.*

30. *Id.* at 265. There were two small allocations of surplus funds to plan participants in 1972. *Id.*

In 1982, Manulife released nearly three million dollars of surplus plan funds to the Pension Society.³¹ The Pension Society allocated one million dollars to plan participants and allocated the remainder to the NHL and its teams.³² In 1987, Manulife allocated an additional twenty-four million dollars in surplus funds to the Pension Society.³³ The Pension Society allocated less than four and a half million dollars to plan participants and approximately sixteen and a half million dollars to the member clubs.³⁴ Several retired NHL players charged that the distribution to the member clubs violated the NHL Plan.³⁵ On April 26, 1991, several retired Canadian players filed suit in the Ontario Court of Justice.³⁶ On June 6, 1991, several retired United States players brought suit in the United States District Court for the District of New Jersey.³⁷

In *Bathgate v. National Hockey League Pension Society*,³⁸ the Canadian plaintiffs alleged that the Pension Society distribution was a breach of the contract and a breach of the trustee's fiduciary duty under Canadian common law.³⁹ The plaintiffs sought relief which included the following: (1) an order reallocating surplus funds from the member clubs and the Pension Society to the plan participants and their beneficiaries; (2) an accounting of funds; (3) an order replacing the Pension Society as trustee and (4) an order appointing a new trustee.⁴⁰ The Ontario Court of Justice granted the

31. *Id.*

32. *Id.*

33. *Id.* Manulife allocated the twenty-four million dollars in exchange for the Pension Society's agreement to allow Manulife to convert the pension fund from a participating to a nonparticipating group contract so that surplus funds would no longer be generated under the plan. *Id.*

34. *Id.*

35. The named plaintiffs in the Canadian suit were: Andy Bathgate, Carl Brewer, Gordie Howe, Bobby Hull, Al Stanley, Eddie Shack and Leo Reise. *Bathgate*, 1992 Ont. C.J. LEXIS 1830, at *1.

36. *Id.*

37. *Dailey*, 780 F. Supp. at 264. Bob Dailey and Reggie Leach were the named plaintiffs in the United States suit. *Dailey*, 987 F.2d at 172. While the Canadian players represented a class of players who retired before June 1982, Dailey and Leach represented players who retired before 1988. *Id.* at 174. The parties to the action, however, made no point of the distinction between the coverage of the two classes in connection with the argument directed to the application of *Princess Lida*. *Id.* at n.2. Furthermore, Dailey and Leach were included in the class represented in *Bathgate*. Brief for Appellees at 14, *Dailey v. National Hockey League*, 987 F.2d 172 (3d Cir.) (No. 92-5156), *cert. denied*, 114 S. Ct. 67 (1993).

38. No. RE 785/91, 1992 Ont. C.J. LEXIS 1830 (Ont. C.J. Oct. 21, 1992).

39. *Id.* at *75-76.

40. *Dailey*, 987 F.2d at 174-75. The Canadian plaintiffs also sought the following relief: a declaration that the Pension Society and the NHL were in breach of their legal and fiduciary duties for improperly allocating surplus funds; a declara-

relief, except for the removal of the Pension Society as trustee of the NHL Plan.⁴¹

In *Dailey*, the plaintiffs claimed that the Pension Society violated sections 1104, 1109 and 1103(c)(1) of ERISA.⁴² The *Dailey* plaintiffs sought essentially the same relief as the *Bathgate* plaintiffs despite the absence of a Canadian ERISA statute.⁴³

The NHL moved to dismiss the players' complaint in *Dailey*, but the district court denied the request.⁴⁴ The NHL then filed an interlocutory appeal.⁴⁵ In *Dailey*, the Third Circuit Court of Appeals reversed the district court's decision and dismissed the action.⁴⁶ The Third Circuit held that *Princess Lida* was applicable to the *Dailey* pension plan dispute despite the ERISA claims and, as a result, the district court lacked subject matter jurisdiction.⁴⁷

III. BACKGROUND

The United States' dual court system may create conflicts if both a state and a federal court exercise jurisdiction over the same property and issue conflicting orders.⁴⁸ In *Princess Lida of Thurm &*

tion that any amendments allocating surplus to persons other than plan participants and their beneficiaries were null and void and attorney's fees. *Id.*

41. *Bathgate*, 1992 Ont. C.J. LEXIS 1830, at *186-89.

42. *Dailey*, 780 F. Supp. at 265.

43. *Id.* at 266. The *Dailey* plaintiffs requested the following relief:

1) an injunction prohibiting defendants from removing any more surplus funds from the pension plan and prohibiting defendants from executing any further amendments that are inconsistent with the 1967 Agreement; 2) an order directing defendants to provide . . . an accounting of all surplus funds generated by the plan since its inception and directing that all such funds be returned to the plan and allocated to plaintiffs' accounts; 3) an order directing defendants to reconvert the contract with Manulife from a nonparticipating to a participating contract, to allocate all surplus funds earned by such contract in the future to plaintiffs' accounts . . . ; 4) an order removing the NHL Pension Society as trustee of the fund and appointing a new trustee . . . ; 5) an award of money damages . . . ; and 6) an award of attorneys fees.

Id. at 265-66.

44. *Dailey*, 987 F.2d at 175. The district court held that dismissal was not warranted under the *Princess Lida*, forum non conveniens or *Colorado River* doctrines. *Dailey*, 780 F. Supp. at 271, 273. The court was particularly concerned that the plaintiffs would lose their ERISA claims if they were forced to have their case tried only in Canada due to ERISA's exclusive jurisdiction provisions. *Id.* at 271. For a discussion of the *Colorado River* doctrine, see *infra* notes 82-85 and accompanying text. For a definition of forum non conveniens, see *infra* note 102.

45. *Dailey*, 987 F.2d at 173 (relying on 28 U.S.C. § 1292(b)).

46. *Id.*

47. *Id.* at 178.

48. The holding of securities in escrow is an example of a conflict between courts. A plaintiff may sue in federal court to recover the securities while the state court is hearing a liquidation proceeding. A conflict could arise because both

Taxis v. Thompson,⁴⁹ the Supreme Court formulated a rule to resolve this conflict.⁵⁰

A. *Princess Lida*

In *Princess Lida*, the Supreme Court reviewed a dispute over a trust agreement that had been established by a divorce decree.⁵¹ When the ex-husband repudiated the trust agreement, his ex-wife, Princess Lida, and their three sons brought suit seeking specific performance of the terms of the trust agreement.⁵² The trial court upheld the agreement, ordered an accounting and removed the ex-husband as trustee.⁵³ The trial court also retained jurisdiction over the trust and the new trustees filed accounts⁵⁴ with the court.⁵⁵

In 1938, fifteen years after the first suit, Princess Lida and one son brought an action in equity against the trustees in the United States District Court for the Western District of Pennsylvania alleging mismanagement of the trust fund.⁵⁶ Princess Lida requested removal of the trustees and repayment of losses to the estate.⁵⁷ The Supreme Court held that the federal district court lacked subject

courts need to control the escrow account in order to grant relief. See *Blackhawk Heating & Plumbing Co. v. Geeslin*, 530 F.2d 154, 156-59 (5th Cir. 1967).

49. 305 U.S. 456 (1939).

50. *Id.* at 466.

51. *Id.* at 458. The trust agreement provided that profits derived from the ex-husband's partnerships would be used to make support payments. *Id.* The ex-husband was required to pay the trustees an annuity of \$15,000 for the first three years and \$20,000 a year thereafter. *Id.* He was required to pay any difference between the amount of the annuity and one-third of his share of the partnerships' profits annually until a fund was established in the hands of the trustees amounting to \$300,000. *Id.*

52. *Id.* Princess Lida and her sons brought the suit in equity in the Common Pleas Court of Fayette County, Pennsylvania. *Id.*

53. *Id.*

54. A trustee files an account to communicate information concerning the administration of a trust. PENNSYLVANIA BAR INST., FIDUCIARY ACCOUNTING: THE APPROVAL PROCESS 1 (1991). The account is a written summary of receipts and disbursements made by the trustee during administration and net balances remaining in the trustee's hands. *Id.* In Pennsylvania, trustees must file an account of their administration whenever directed to do so by the court or at any other time. *Id.*; see 20 PA. CONS. STAT. ANN. § 7181 (Supp. 1993) (effective 1978). For more information on the filing of accounts, see generally ROBERT WHITMAN & LAWRENCE J. KRAMER, FIDUCIARY ACCOUNTING GUIDE (1990).

55. *Princess Lida*, 305 U.S. at 459.

56. *Id.*

57. *Id.* Princess Lida and her son alleged that the trustees made unfit investments, failed to render proper accounts and were unfit to act as trustees. *Thompson v. Fitzgerald*, 198 A. 58, 61 (Pa. 1938), *aff'd sub nom. Princess Lida of Thurn & Taxis v. Thompson*, 305 U.S. 456 (1939).

matter jurisdiction because the earlier state accounting action and the later federal action were both quasi-in rem.⁵⁸

The Supreme Court based its holding in *Princess Lida* on the common law rule that if two suits are in rem or quasi-in rem actions, courts must yield to the court which first exercised its jurisdiction.⁵⁹ This common law rule was well-established prior to *Princess Lida*.⁶⁰ The *Princess Lida* doctrine will not apply, however, if either one of the suits is an in personam action.⁶¹

In an in rem action, the court must have possession or control of the property that is the subject of the suit in order to grant the

58. *Princess Lida*, 305 U.S. at 467-68. In holding that the district court lacked subject matter jurisdiction, the Supreme Court stated that:

The Common Pleas Court could not effectively exercise the jurisdiction vested in it, without a substantial measure of control of the trust funds. Its proceedings are . . . quasi in rem, and the jurisdiction acquired upon the filing of the trustees' account is exclusive. The District Court for the Western District of Pennsylvania is without jurisdiction of the suit subsequently brought for the same relief, and the petitioners were properly enjoined from further proceeding in that court.

Id.

59. *Id.* at 466; see generally 14 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3631 (1976).

60. *Dailey*, 987 F.2d at 175; see *United States v. Bank of New York & Trust Co.*, 296 U.S. 463, 477 (1936) ("If the two suits are *in rem* or *quasi in rem* . . . the jurisdiction of one court must of necessity yield to that of the other."); *Penn Gen. Casualty Co. v. Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195 (1935) ("[I]f the two suits are *in rem* or *quasi in rem* . . . To avoid unseemly and disastrous conflicts . . . the court first assuming jurisdiction . . . over the property may maintain and exercise that jurisdiction to the exclusion of the other.") (citations omitted); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 235 (1922) ("[W]here the action is one in rem that court - whether state or federal - which first acquires jurisdiction draws to itself the exclusive authority to control and dispose of the res . . .").

61. *Princess Lida*, 305 U.S. at 466. The Court stated: "[I]f the judgment sought is strictly in personam, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as *res judicata* in the other." *Id.* at 466 n.17 (citing *United States v. Bank of New York & Trust Co.*, 296 U.S. 463, 477 (1936); *Palmer v. Texas*, 212 U.S. 118, 129 (1909); *Farmers' Loan & Trust Co. v. Lake St. Elevated R.R.*, 177 U.S. 51, 61 (1900)).

An action is in personam if it is brought "to enforce personal rights and obligations brought against the person and based on jurisdiction of the person." *Brooks v. United States*, 833 F.2d 1136, 1143 (4th Cir. 1987). For examples of cases that did not apply the *Princess Lida* doctrine because at least one of the actions was in personam, see *Southwestern Bank & Trust Co. v. Metcalf State Bank*, 525 F.2d 140, 143 (10th Cir. 1975) (holding that federal action for money damages against trustee was in personam and, therefore, could proceed despite state liquidation action); *Miller v. Miller*, 423 F.2d 145, 147 (10th Cir. 1970) (holding that action to determine personal rights under written instrument was in personam and, therefore, both federal and state actions could proceed); *Koller v. Richmond Indus. Loan & Thrift*, 407 F. Supp. 1211, 1212 (E.D. Va. 1975) (holding that action to impose joint and several liability was in personam and, therefore, both federal and state actions could proceed).

relief requested by the plaintiff.⁶² In a quasi-in rem action, the action is brought personally against the defendant, but the defendant's interest in the property serves as the basis for the court's jurisdiction.⁶³ In a quasi-in rem action, as in an in rem action, the court must have control of the property at issue in order to grant the relief requested.⁶⁴ The administration of a trust is a classic example of a quasi-in rem action.⁶⁵

The *Princess Lida* doctrine has become firmly rooted in the United States court system.⁶⁶ For example, in *Ewald v. Citizens Fidelity Bank & Trust Co.*,⁶⁷ the United States Court of Appeals for the Sixth Circuit affirmed the district court's dismissal of a complaint based on the *Princess Lida* doctrine.⁶⁸ *Ewald*, like *Dailey*, involved a dispute over the administration of a trust.⁶⁹ The plaintiffs in *Ewald* first filed suit in state court on August 1, 1955.⁷⁰ Subsequently, they filed suit in federal court on January 17, 1956, presenting the same

62. *Penn Gen. Casualty*, 294 U.S. at 195 (involving liquidation of insurance company).

63. BLACK'S LAW DICTIONARY 1245 (6th ed. 1990); see also *Shaffer v. Heitner*, 433 U.S. 186, 199 n.17 (1977). For convenience, courts often use the term in rem in place of in rem and quasi-in rem. See *id.*

64. *Penn Gen. Casualty*, 294 U.S. at 195.

65. See *Princess Lida*, 305 U.S. at 467. The Court stated:

We have said that the principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property.

Id. at 466; see, e.g., *Blackhawk Heating & Plumbing Co. v. Geeslin*, 530 F.2d 154, 157 (7th Cir. 1976); *Ewald v. Citizens Fidelity Bank & Trust Co.*, 242 F.2d 319, 321 (6th Cir. 1957); *Swanson v. Bates*, 170 F.2d 648, 651 (10th Cir. 1948); *Asbestos Workers Local 14 v. Hargrove*, No. CIV.A.93-0728, 1993 WL 183990, at *4 (E.D. Pa. May 25, 1993); *Shaw v. First Interstate Bank*, 695 F. Supp. 995, 1000 (W.D. Wis. 1988).

66. *Beach v. Rome Trust Co.*, 269 F.2d 367, 371 (2d Cir. 1959) ("[*Princess Lida*] is so firmly rooted in our law as to have required and not merely permitted [the court] to dismiss the plaintiff's claims insofar as [she] sought an accounting of the estate and trust.").

67. 242 F.2d 319 (6th Cir. 1957).

68. *Id.* at 321.

69. *Id.* at 320. In 1935, Sterling Ewald executed an inter vivos trust agreement conveying most of his personal estate to Citizens Fidelity Bank (Citizens) as trustee. *Id.* The trust agreement provided for payments from the trust's funds to Sterling's wife, Florence and his son Gerald. *Id.* When Sterling Ewald died in 1955, the trust's property was transferred by Citizens as inter vivos trustee to itself as executor of Sterling Ewald's estate. *Id.*

70. *Id.*

claims as they did in state court.⁷¹ The Sixth Circuit held that because both actions were quasi-in rem, the federal court had to yield to the pending litigation in the state court.⁷²

A more recent example than *Ewald* is *Asbestos Workers Local 14 v. Hargrove*,⁷³ in which the United States District Court for the Eastern District of Pennsylvania held that the *Princess Lida* doctrine applied to the dispute and dismissed the complaint.⁷⁴ The *Hargrove* court held that because the state court exercised its jurisdiction first and the action was in rem, the *Princess Lida* doctrine mandated the dismissal of the subsequent federal litigation involving the same assets.⁷⁵

As the Supreme Court stated in *Princess Lida*, its doctrine is "necessary to the harmonious cooperation of federal and state tribunals."⁷⁶ As several courts have stated, one court must yield to the other in the interest of comity to prevent conflicting judgments concerning the same trust res.⁷⁷ This interest in comity encompasses not only relations between federal and state courts, but also relations between United States and foreign courts.⁷⁸ In *Chesley v.*

71. *Id.* at 321.

72. *Id.* at 321-22.

73. No. CIV.A.93-0728, 1993 WL 183990 (E.D. Pa. May 25, 1993). In *Hargrove*, the plaintiff sought the release of funds seized during a state receivership action. *Id.* at *1-2.

74. *Id.* at *5.

75. *Id.*; see *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 822 (1976); *Donovan v. Dallas*, 377 U.S. 408, 412 (1964); *Chesley v. Union Carbide Corp.*, 927 F.2d 60, 66 (2d Cir. 1991); *Blackhawk Heating & Plumbing Co. v. Geeslin*, 530 F.2d 154, 157 (7th Cir. 1976); *Southwestern Bank & Trust Co. v. Metcalf State Bank*, 525 F.2d 140, 141-42 (10th Cir. 1975); *Miller v. Miller*, 423 F.2d 145, 146-47 (10th Cir. 1970); *Shaw v. First Interstate Bank*, 695 F. Supp. 995, 998 (W.D. Wis. 1988).

76. *Princess Lida*, 305 U.S. at 466 (citing *United States v. Bank of New York & Trust Co.*, 296 U.S. 463, 478 (1936)). The Supreme Court articulated the necessity for harmony between different jurisdictions:

This principle is applied in the discharge of the long recognized duty of this court to give effect to such "methods of procedure as shall serve to conciliate the distinct and independent tribunals of the States and of the Union, so that they may cooperate as harmonious members of a judicial system coextensive with the United States."

Bank of New York & Trust Co., 296 U.S. at 477-78 (quoting *Taylor v. Carryl*, 61 U.S. (20 How.) 583, 595 (1857)).

77. See *Crawford v. Courtney*, 451 F.2d 489, 491 (4th Cir. 1971) ("Comity is the heart of this historic rule."); *Centronics Data Computer Corp. v. Merkle-Korff Indus.*, 503 F. Supp. 168, 169-70 (D.N.H. 1980) ("This court may . . . for reasons of comity and efficiency stay an action when a suit is pending in a state court between the same parties which will conveniently and authoritatively dispose of the issues in dispute between the federal litigants.").

78. See *Canadian Filters (Harwich) Ltd. v. Lear-Siegler*, 412 F.2d 577, 578 (1st Cir. 1969) ("[T]he direct effect of the district court's action on the jurisdiction of a

Union Carbide Corp.,⁷⁹ the United States Court of Appeals for the Second Circuit stated that, for comity reasons, the *Princess Lida* doctrine should apply whenever plaintiffs "requested interference by American courts with a res under the jurisdiction of a foreign court."⁸⁰ On that basis, the Second Circuit held that a United States court should not interfere with a settlement fund supervised by the Supreme Court of India.⁸¹

A dismissal based on the *Princess Lida* doctrine should not be confused with the abstention doctrine formulated by the Supreme Court in *Colorado River Water Conservation District v. United States*.⁸² In *Colorado River*, the Supreme Court held that when there is concurrent federal and state jurisdiction, the federal district court may abstain from hearing the case for reasons of "wise judicial administration."⁸³ The Supreme Court listed factors that district courts

foreign sovereign requires that such action be taken only with care and great restraint."); *Brinco Mining Ltd. v. Federal Ins. Co.*, 552 F. Supp. 1233 (D.D.C. 1982) (holding that for reasons of comity federal courts should defer to Canadian court and dismiss case).

79. 927 F.2d 60 (2d Cir. 1991).

80. *Id.* at 66. The Second Circuit reasoned that principles of comity require greater deference to foreign courts, stating: "It is not the business of our courts to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation. Such an assumption would directly conflict with the principle of comity." *Id.* (quoting *Jhirad v. Ferrandina*, 536 F.2d 478, 484-85 (2d Cir.), *cert. denied*, 429 U.S. 833 (1976)).

81. *Chesley*, 927 F.2d at 67. The suit in *Chesley* arose out of litigation resulting from the gas leak disaster in Bhopal, India. *Id.* at 61; see *In re Union Carbide Corp. Gas Plant Disaster*, 634 F. Supp. 842 (S.D.N.Y. 1986), *modified*, 809 F.2d 195 (2d Cir.), *cert. denied*, 484 U.S. 871 (1987). Litigation in India resulted in a large settlement in favor of the Bhopal victims. *Chesley*, 927 F.2d at 61. In *Chesley*, the attorneys for the Bhopal plaintiffs moved to recover fees and expenses from the settlement fund. *Id.* at 63-64.

82. 424 U.S. 800 (1976). *Princess Lida* should also not be confused with three traditional abstention doctrines: *Putnam*, *Burford* and *Younger*. For a discussion on these abstention doctrines, see David J. McCarthy, Note, *Preclusion Concerns as an Additional Factor When Staying a Federal Suit in Deference to a Concurrent State Proceeding*, 53 FORDHAM L. REV. 1183, 1185 n.9 (1985).

83. *Colorado River*, 424 U.S. at 817-18. In *Colorado River*, Colorado divided itself into seven Water Divisions. *Id.* at 804. The Water Divisions were created to allocate scarce water resources. *Id.* at 804-05. On November 14, 1972, the federal government filed a suit in the United States District Court for the District of Colorado seeking declaration of the federal government's rights to waters in certain rivers and their tributaries. *Id.* at 805. Shortly thereafter, one of the defendants in the federal suit filed an application in state court seeking an order directing service of process on the United States in order to make it a party to proceedings for both state and federal claims. *Id.* at 806. The trial court dismissed the case stating that the doctrine of abstention required deference to the concurrent proceedings in state court. *Id.* The United States Court of Appeals for the Tenth Circuit reversed, holding that abstention was inappropriate. *Id.* The Supreme Court granted certiorari to consider whether abstention was appropriate. *Id.* The Court then reversed the Tenth Circuit. *Id.* For a more detailed discussion on *Colorado*

may use to determine when abstention is appropriate.⁸⁴ While the Court in *Colorado River* stated that abstention is within the court's discretion, the *Princess Lida* doctrine is compulsory and mandates a dismissal whenever two suits are brought in rem or quasi-in rem in different jurisdictions.⁸⁵

B. ERISA's Exclusive Jurisdiction

In 1974, Congress passed ERISA in an effort to prevent abuse and mismanagement in the private pension plan system.⁸⁶ The federal courts have exclusive jurisdiction over most ERISA violations,⁸⁷ except for section 1132(a)(1)(B) violations which are subject to concurrent jurisdiction between federal and state courts.⁸⁸ All other ERISA claims are within the exclusive jurisdiction of federal courts.⁸⁹ Actions brought under section 1132(a)(1)(B) are personal in nature, unlike other ERISA claims that allege violations of a particular provision of ERISA or an ERISA plan.⁹⁰ Plaintiffs suing

River, see Linda S. Mullenix, *A Branch Too Far: Pruning the Abstention Doctrine*, 75 GEO. L.J. 99 (1986); David A. Sonenshein, *Abstention: The Crooked Course of Colorado River*, 59 TUL. L. REV. 651 (1985).

84. The Supreme Court's factors included the following: the avoidance of piecemeal litigation, the order in which jurisdiction was obtained and the inconvenience of the federal forum. *Colorado River*, 424 U.S. at 819-20; see, e.g., *Voktas, Inc. v. Central Soya Co.*, 689 F.2d 103, 106 (7th Cir. 1982).

85. See *Crawford v. Courtney*, 451 F.2d 489, 492 (4th Cir. 1971). The Fourth Circuit distinguished between "[v]oluntary abstention within the sound discretion of the district court" and "compulsory *Princess Lida* - type abstention." *Id.*; see also *PPG Indus., Inc. v. Continental Oil Co.*, 478 F.2d 674, 677 (5th Cir. 1973) (calling *Princess Lida* "virtually mechanical in rem rule").

86. COLEMAN, *supra* note 10 at v.

87. ERISA § 1132(e)(1), 29 U.S.C. § 1132(e)(1) (1988). Section 1132(e)(1) states:

Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

Id.

88. ERISA, § 1132(a)(1)(B).

89. See *Livolsi v. Ram Constr. Co.*, 728 F.2d 600, 602 (3d Cir. 1984). According to ERISA's legislative history, Congress granted the federal courts exclusive jurisdiction because most employee benefit plans were interstate in character and Congress believed there was an essential need to provide for a uniform source of law. H.R. REP. NO. 533, 93d Cong., 2d Sess. 17 (1973), *reprinted* in 1974 U.S.C.A.N. 4639, 4655; see also *Chicago Dist. Council of Carpenters Pension Fund v. Olson Constr., Inc.*, No. 90 C 1905, 1991 WL 22521, at *1 (N.D. Ill. Feb. 15, 1991) (stating that Congress granted exclusive federal jurisdiction over most ERISA claims to cultivate uniformity, expertise and sometimes to provide liberal federal protections).

90. ERISA, § 1132(a)(1)(B); see *Livolsi*, 728 F.2d at 602.

under section 1132(a)(1)(B) seek: 1) to declare the plaintiff beneficiary's rights under the plan; 2) to recover benefits personally due to the plaintiff beneficiary or 3) to enforce personal rights to a plan.⁹¹

In other contexts, federal courts with exclusive jurisdiction have taken different approaches in deciding whether dismissal is appropriate.⁹² In *Levy v. Lewis*,⁹³ for example, the United States Court of Appeals for the Second Circuit stated that "[w]here exclusive jurisdiction exists, only the federal courts can provide affirmative relief."⁹⁴ *Levy* involved a dispute over the termination of retirement benefits of retired employees of Consolidated Mutual Insurance Company (CMIC).⁹⁵ Because CMIC was in poor financial condition, the New York State Superintendent of Insurance was appointed by a state court as its rehabilitator.⁹⁶ CMIC's financial position declined and the state court ordered the Superintendent to liquidate CMIC.⁹⁷ The Superintendent terminated the employees' retirement benefits and five retirees filed a Notice of Claim on behalf of all retirees.⁹⁸ The Superintendent denied the claims and instituted proceedings in New York Supreme Court in order to have the court approve his disallowance of the claims.⁹⁹ Subsequently, the retirees brought a class action against the Superintendent in the United States District Court for the Southern District of New

91. Section 1132(a)(1)(B) provides that "[a] civil action may be brought by a participant or beneficiary . . . to recover benefits due to him under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." *Id.* According to ERISA's legislative history, suits brought under § 1132(a)(1)(B) may not involve a specific title I provision of ERISA. See H.R. REP. NO. 1280, 93d Cong., 2d Sess. 327 (1974), reprinted in 1974 U.S.C.A.N. 5038, 5107.

92. While there have been many cases dealing with the applicability of the *Colorado River* and forum non conveniens doctrines to claims within exclusive federal jurisdiction, none until *Dailey* have dealt with these claims in a *Princess Lida* context. *Dailey*, 987 F.2d at 178. For a definition of forum non conveniens, see *infra* note 102.

93. 635 F.2d 960 (2d Cir. 1980).

94. *Id.* at 967; see also *Minucci v. Agrama*, 868 F.2d 1113, 1115 (9th Cir. 1989) (holding *Colorado River* doctrine inapplicable to copyright claim which was within exclusive federal jurisdiction); *Andrea Theatres, Inc. v. Theatre Confections, Inc.*, 787 F.2d 59, 62 (2d Cir. 1986) (holding that "abstention is clearly improper when a federal suit alleges claims within the exclusive jurisdiction of the federal courts" in antitrust case).

95. *Levy*, 635 F.2d at 961.

96. *Id.* at 962.

97. *Id.*

98. *Id.*

99. *Id.*

York, alleging that the termination of the retirement benefits violated ERISA sections 1132(a)(1)(B) and 1104.¹⁰⁰

The forum non conveniens doctrine may sometimes be used to dismiss cases where there is exclusive federal jurisdiction. In *Howe v. Goldcorp Investments, Ltd.*,¹⁰¹ the United States Court of Appeals for the First Circuit held that the federal courts may invoke the forum non conveniens doctrine¹⁰² to dismiss complaints, even if the court has exclusive federal jurisdiction.¹⁰³ In *Howe*, the plaintiff alleged that the defendants violated federal securities laws by failing to adequately disclose their intentions, plans, objectives and other circumstances related to their efforts to take over two Canadian companies.¹⁰⁴ The enforcement provision of the Securities Exchange Act of 1934 provides:

The district courts of the United States and United States courts of any Territory or other place subject to the jurisdiction of the United States shall have *exclusive jurisdiction* of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder.¹⁰⁵

The court applied the enforcement section to the dispute in *Howe* because the plaintiff alleged violations of section 78j(b), the Exchange Act's antifraud provision.¹⁰⁶ The *Howe* court held that the use of the forum non conveniens doctrine to dismiss the case was appropriate, despite section 78aa's exclusive jurisdiction language.¹⁰⁷

100. *Id.* The district court dismissed the case. *Id.* at 961. The United States Court of Appeals for the Second Circuit affirmed, holding that the Superintendent could not be considered an ERISA fiduciary, thus there was no exclusive federal jurisdiction and the concurrent claims should be left to the state court. *Id.*

101. 946 F.2d 944 (1st Cir. 1991), *cert. denied*, 112 S. Ct. 1172 (1992).

102. The forum non conveniens doctrine allows a court to decline jurisdiction for prudential reasons, even though jurisdiction is otherwise authorized. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507-08 (1947). Factors a court may consider when determining whether to decline jurisdiction are: 1) whether the plaintiffs could easily bring their suit in another forum or jurisdiction; 2) whether it would be inconvenient or oppressive to force the defendants to appear in the initially chosen forum and 3) whether the chosen forum and the lawsuit are so attenuated that conducting the case in the chosen forum constitutes an imposition on the court. *Howe*, 946 F.2d at 947.

103. *Howe*, 946 F.2d at 955.

104. *Id.* at 945.

105. 15 U.S.C. § 78aa (1988) (emphasis added).

106. *Howe*, 946 F.2d at 945 (citing 15 U.S.C. § 78j(b) (1988)).

107. *See id.* at 955.

Additionally, there have been cases where federal courts did not have exclusive jurisdiction, but plaintiffs were nevertheless precluded from pursuing a claim in the United States because federal courts declined to exercise jurisdiction.¹⁰⁸ In *Piper Aircraft Co. v. Reyno*,¹⁰⁹ the Supreme Court stated that federal courts must consider whether another jurisdiction would provide adequate relief, when determining whether the court should exercise jurisdiction.¹¹⁰ Under the holding in *Piper*, if adequate relief is available in the other jurisdiction, the federal court should defer to that jurisdiction, even if it offers inferior relief.¹¹¹ Relying on *Piper*, the Fifth Circuit, in *Kempe v. Ocean Drilling & Exploration Co.*,¹¹² held that dismissal of a federal RICO case based on forum non conveniens was appropriate despite any consequent loss of the plaintiff's RICO claims.¹¹³ The Fifth Circuit found that the Bermuda courts had competent jurisdiction because they were capable of granting adequate relief.¹¹⁴

108. See, e.g., *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981); *Kenner Prod. Co. v. Societe Fonciere et Financiere Agache-Willot*, 532 F. Supp. 478 (S.D.N.Y. 1982).

109. 454 U.S. 235 (1981).

110. *Id.* at 254. In *Piper*, the plaintiff brought a wrongful death action in the United States District Court for the Middle District of Pennsylvania. *Id.* at 238. The wrongful death action arose from a plane crash that took place in Scotland. *Id.* The decedents, as well as their heirs and next of kin, were Scottish citizens and residents. *Id.* at 239. The aircraft that crashed was built in the United States but was registered in Great Britain. *Id.* The British Department of Trade investigated the accident and determined that a mechanical failure may have caused the crash. *Id.* The plaintiff brought the action in the United States because its laws regarding liability, capacity to sue and damages were more favorable than Scotland's laws. *Id.* at 240. The district court dismissed the case on the grounds of forum non conveniens. *Id.* at 243-44. The United States Court of Appeals for the Third Circuit reversed the district court. *Id.* at 244. The Supreme Court reversed the Third Circuit, holding that dismissal based on forum non conveniens may be granted "even though the law applicable in the alternative forum is less favorable to the plaintiff's chance of recovery." *Id.* at 250. The Supreme Court stated:

We do not hold that the possibility of an unfavorable change in law should *never* be a relevant consideration in a *forum non conveniens* inquiry [I]f the remedy provided by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all, the unfavorable change in law may be given substantial weight; the district court may conclude that dismissal would not be in the interests of justice.

Id. at 254 (footnote omitted) (emphasis in original).

111. See *id.*

112. 876 F.2d 1138 (5th Cir.), *cert. denied*, 493 U.S. 918 (1989).

113. *Id.* at 1146. *Kempe* involved alleged violations of federal mail and wire fraud statutes by companies primarily located in Bermuda. *Id.* at 1140. The United States District Court for the Eastern District of Louisiana ruled that Bermuda was an adequate forum. *Id.* at 1141.

114. *Id.* at 1146. The Court in *Kempe* stated: "Although the RICO cause of action is not available in Bermuda, a forum is inadequate only where it would

In *Fleeger v. Clarkson Co.*,¹¹⁵ the United States District Court for the Northern District of Texas dismissed a shareholder derivative suit that had also been filed in Canada, based solely on principles of comity with the Canadian court.¹¹⁶ The court dismissed the case even though Canadian law placed more restrictions on shareholder derivative suits than United States law placed on shareholder derivative suits.¹¹⁷ The court held that the test was "whether the law of Canada is against 'good morals or natural justice . . . or that for some other reason the enforcement of it would be prejudicial to the general interests of our own citizens.'"¹¹⁸ Thus courts have dismissed cases even though the plaintiffs lost the right to significant claims.

IV. DISCUSSION: *DAILEY V. NATIONAL HOCKEY LEAGUE*

In *Dailey*, the Third Circuit discussed the applicability of the *Princess Lida* doctrine to ERISA claims when a federal court and a foreign court have concurrent jurisdiction.¹¹⁹ In determining this issue of first impression the Third Circuit discussed: 1) the impact that the loss of ERISA claims would have on the plaintiffs; 2) the potential for conflict with the Canadian court if the federal court exercised jurisdiction and 3) the similarities between *Dailey* and *Howe v. Goldcorp Investments, Ltd.*¹²⁰

afford a plaintiff no remedy at all." *Id.* Because Bermuda permitted litigation in its courts for fraud, negligent misrepresentation, breach of fiduciary duty and piercing the corporate veil, the Bermuda courts had the power to "see to it that defendants make good of whatever harm they did." *Id.* at 1145 (quoting *Kempe v. Ocean Drilling & Exploration Co.*, 683 F. Supp. 1064, 1071 (E.D. La. 1988)); *see also* *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 768 (9th Cir. 1991) ("Even if the RICO and Lanham Act claims were unavailable in Japan, that would not furnish a sufficient reason to preclude dismissal.").

For an example of a foreign court that did not provide adequate relief, *see* *Laker Airways Ltd. v. Sabena*, 731 F.2d 909 (D.C. Cir. 1984) (finding no equivalent to antitrust suit).

115. 86 F.R.D. 388 (N.D. Tex. 1980).

116. *Id.* at 392-93. The plaintiff brought the derivative suit on behalf of a Canadian corporation. *Id.* at 390. The suit claimed a breach of fiduciary duty by the receiver appointed by the Ontario Court of Justice. *Id.* at 390-91.

117. *Id.* at 394.

118. *Id.* (quoting *Castilleja v. Camero*, 414 S.W.2d 424, 427 (Tex. 1967)) (alteration in original); *accord* *Cunard Steamship Co., Ltd. v. Salen Reefer Servs. AB*, 773 F.2d 452, 457 (2d Cir. 1985); *DeYoung v. Beddome*, 707 F. Supp. 132, 135 (S.D.N.Y. 1989); *see also* *Kenner Prod. Co. v. Societe Fonciere et Financiere Agache-Willot*, 532 F. Supp. 478, 479 (S.D.N.Y. 1982) ("Comity is to be accorded a decision of a foreign court so long as that court is a court of competent jurisdiction and as long as the laws and public policy of the forum state and the rights of its residents are not violated.").

119. *Dailey*, 987 F.2d at 178.

120. *See id.* at 177-79.

The Third Circuit initially addressed the applicability of the *Princess Lida* doctrine to *Dailey*.¹²¹ The court held that the United States District Court for the District of New Jersey erred by not applying the *Princess Lida* doctrine to the case.¹²² Using what it termed a "pragmatic" approach,¹²³ the district court concluded that there was no danger that the two courts would issue conflicting orders despite the fact that the plaintiffs sought injunctive relief in both the Canadian and United States actions.¹²⁴ The Third Circuit disagreed with the lower court, stating that the *Princess Lida* doctrine is a mechanical rule and must be applied because both actions were quasi-in rem.¹²⁵

The Third Circuit next addressed the impact that the loss of ERISA claims would have on the applicability of the *Princess Lida* doctrine.¹²⁶ The court found that the district court erroneously re-

121. *Id.* at 175. The Third Circuit confined its discussion of *Princess Lida* to the following passage:

We have said that the principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually seized . . . but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property.

Id. (quoting *Princess Lida*, 305 U.S. at 466). For a discussion of *Princess Lida*, see *supra* notes 49-85 and accompanying text.

122. *Dailey*, 987 F.2d at 176. The district court distinguished *Princess Lida* on the ground that *Princess Lida* required "more comprehensive control by the court over the administration of the trust" than *Dailey* required. *Dailey*, 780 F. Supp. at 267.

123. Under the "pragmatic" approach the district court would not issue orders of relief that conflicted with the Canadian court's order. *Dailey*, 780 F. Supp. at 268.

124. *Id.*

125. *Dailey*, 987 F.2d at 176. The Third Circuit found that the actions were quasi-in rem because "[t]he primary relief sought in both actions [was] the restoration of trust funds which were allegedly misappropriated." *Id.* at 177. The court stated that "[t]his is precisely the situation which was at issue in *Princess Lida* and which the court stated was encompassed within the term *quasi in rem*." *Id.* The Third Circuit also found that the Canadian court would need to control the Plan's res because the Canadian suit sought restoration of the principal, injunctive relief, an accounting and removal of the trustee. *Id.* Because similar relief was sought in *Dailey*, the district court would be required to "exercise control over the same property that is subject to the control of the Canadian court as well as requiring it to determine the future status of the incumbent Canadian trustee." *Id.* The Third Circuit found this was the "type of disharmony the *Princess Lida* Court sought to avoid." *Id.*

126. *Id.* The plaintiffs lost their ERISA claims because they could only litigate those claims in federal court. Furthermore, the Canadian court issued a court order providing that the plaintiffs were not permitted to litigate their ERISA claims. Brief for Appellees at 24, *Dailey v. National Hockey League*, 987 F.2d 172 (3d Cir.) (No. 92-5156), *cert. denied*, 114 S. Ct. 67 (1993).

lied¹²⁷ on *Levy v. Lewis*.¹²⁸ The Third Circuit held that *Levy* was inapplicable to *Dailey* because the court in *Levy* discussed the ERISA claims subject to exclusive jurisdiction in a discretionary *Colorado River* context, not in a compulsory *Princess Lida* context.¹²⁹

The Third Circuit concluded that *Dailey* must be dismissed to avoid the potential for conflicting orders despite the "strong public policy reflected in ERISA designed to protect pension rights."¹³⁰ If either the district court or the Canadian court ordered a reallocation of trust funds, the other court would have to agree or there would be a conflict between the two courts.¹³¹ Because this conflict was an essential factor in the formulation of the *Princess Lida* doctrine, the Third Circuit held that *Princess Lida* should be applied to the case even though the ERISA claims would be lost.¹³² Furthermore, the court found that the retired NHL players would not be prejudiced by the loss of ERISA claims because Canadian law offered adequate relief.¹³³

Finally, the court discussed *Howe v. Goldcorp Investments, Ltd.*¹³⁴ The court in *Howe* allowed dismissal of exclusive jurisdiction claims on forum non conveniens grounds.¹³⁵ The Third Circuit found it "difficult to see how dismissal could be possible under *forum non conveniens* but at the same time not an available remedy under *Princess Lida*."¹³⁶

127. *Dailey*, 987 F.2d at 177.

128. 635 F.2d 960 (2d Cir. 1980). For a discussion of *Levy*, see *supra* notes 93-100 and accompanying text.

129. *Dailey*, 987 F.2d at 178. For a discussion of *Colorado River*, see *supra* notes 82-85 and accompanying text. *Levy* also dealt with abstention under the *Younger* doctrine. *Levy*, 635 F.2d at 964 (citing *Younger v. Harris*, 401 U.S. 37 (1971)). Under the *Younger* abstention doctrine, "a federal court should not entertain suits challenging state action when the state has already initiated proceedings in the state courts in which the plaintiff is able to raise federal claims." *Levy*, 635 F.2d at 964.

130. *Dailey*, 987 F.2d at 178.

131. See *Bathgate*, 1992 Ont. C.J. LEXIS 1830, at *186-88. The Canadian judgment prohibiting the removal of the Pension Society as trustee might conflict with a district court order finding removal appropriate.

132. *Dailey*, 987 F.2d at 178.

133. See *Bathgate*, 1992 Ont. C.J. LEXIS 1830, at *186-88; see also *Dailey*, 987 F.2d at 175 (noting that plaintiffs in United States suit sought essentially same relief as plaintiffs in Canadian suit).

134. *Dailey*, 987 F.2d at 178. For a discussion of *Howe*, see *supra* notes 101-07 and accompanying text.

135. *Howe*, 946 F.2d at 955.

136. *Dailey*, 987 F.2d at 179. The Third Circuit did not discuss *Shaffer v. Heitner*, 433 U.S. 186 (1977). In *Shaffer*, the Supreme Court held that, for purposes of personal jurisdiction over a nonresident defendant, a state court could not mechanically use property located in the state to establish the minimum contacts necessary to establish personal jurisdiction over a defendant. *Id.* at 203-04. Thus,

Judge Alito dissented from the majority's holding in *Dailey*.¹³⁷ Judge Alito stated that the *Princess Lida* doctrine only prevents conflicts between federal and state courts, not between United States and foreign courts.¹³⁸ In addition, Judge Alito stated that it should make no difference that Canadian law is similar to ERISA because Congress clearly intended ERISA to govern all pension plans, including the NHL Plan.¹³⁹ Judge Alito concluded that the district court's pragmatic approach was preferable to the majority's mechanical approach.¹⁴⁰ According to Judge Alito, the pragmatic approach could accommodate the comity principles underlying the *Princess Lida* doctrine without sacrificing ERISA protections.¹⁴¹

V. ANALYSIS

The Third Circuit properly dismissed the plaintiffs' case in *Dailey*. Because a dispute over the administration of the NHL Plan is a quasi-in rem action, the *Princess Lida* doctrine must be applied. ERISA's exclusive jurisdiction provision does not bar the application of *Princess Lida* because comity dictates that United States courts should not interfere with the proceedings or decisions of foreign courts.

for purposes of establishing personal jurisdiction, the test is the same whether the action is brought in personam, in rem or quasi-in rem. In *Shaffer*, however, the property was not the subject matter of the litigation, nor was the underlying cause of action related to the property. *Id.* at 213. Therefore, the factual situation in *Shaffer* was different from the factual situations in *Princess Lida* and *Dailey*, where the properties were the subject matter of the litigation. Furthermore, the mechanical test in *Princess Lida* and *Dailey* was used to determine whether jurisdiction should be declined, not to determine whether jurisdiction existed in the first place, as was the case in *Shaffer*. For more detailed discussions of *Shaffer*, see Linda J. Silberman, *Shaffer v. Heitner: The End of an Era*, 53 N.Y.U. L. REV. 33 (1978); David H. Vernon, *Single-Factor Bases of In Personam Jurisdiction - A Speculation on the Impact of Shaffer v. Heitner*, 1978 WASH. U. L.Q. 273 (1978).

137. *Dailey*, 987 F.2d at 179 (Alito, J., dissenting).

138. *Id.* at 179 (Alito, J., dissenting). Judge Alito believed that *Chesley v. Union Carbide Corp.*, 927 F.2d 60 (2d Cir. 1991) stood for the proposition that federal courts should be reluctant to exercise supplemental jurisdiction if doing so would interfere with a foreign court's jurisdiction over a res. *Id.* at 179 n.2 (Alito, J., dissenting). Judge Alito did not believe that the court in *Chesley* interpreted the *Princess Lida* doctrine as requiring the automatic dismissal of an action in a United States court if the dismissal resulted in the loss of important federal statutory rights. *Id.* (Alito, J., dissenting).

139. *Dailey*, 987 F.2d at 179 (Alito, J., dissenting). Judge Alito clearly preferred statutory to judge-made law. *See id.* at 179-80 (Alito, J., dissenting).

140. *Id.* at 179 (Alito, J., dissenting).

141. *Id.* at 180 (Alito, J., dissenting). The district court proposed that it retain jurisdiction while it monitored developments in the Canadian litigation and addressed any conflicting orders should they arise. *Id.* at 178-79 (Alito, J., dissenting).

A. *Princess Lida* and Comity

The actions in both *Dailey* and *Bathgate* were quasi-in rem because they involved the administration of a trust.¹⁴² In *Princess Lida*, the Supreme Court addressed a similar situation.¹⁴³ The Supreme Court found that a suit seeking the accounting of a trust and the removal of a trustee was a quasi-in rem action.¹⁴⁴ Because the relief sought in both *Dailey* and *Bathgate* was similar to the relief sought in *Princess Lida*, these actions should be considered quasi-in rem within the meaning of *Princess Lida*.¹⁴⁵

If the district court exercised jurisdiction, it could have issued an order that conflicted with the Canadian order. The district court was not concerned, however, about the danger of conflicting decisions, stating that it would tailor its decision to match the Ontario Court's decision.¹⁴⁶ The district court failed to consider the possibility of a reversal of the Canadian decision.¹⁴⁷ Furthermore,

142. *Id.* at 174-75. Both suits sought reallocation of surplus funds, an accounting of funds, restoration of funds to the trust, removal of the Pension Society as trustee and appointment of a new trustee. *Id.* Only a small amount of the damages was personal in nature because only \$469,841 was removed from the fund. *Bathgate*, 1992 Ont. C.J. LEXIS 1830, at *67. Over \$18 million was not removed. The plaintiffs sought reallocation of the funds within the plan and did not sue the defendants personally. Reply Brief for Appellants at 16, *Dailey v. National Hockey League*, 987 F.2d 172 (3d Cir.) (No. 92-5156), *cert. denied*, 114 S. Ct. 67 (1993).

143. *See Dailey*, 987 F.2d at 177; *see also Princess Lida*, 305 U.S. at 466.

144. *See Princess Lida*, 305 U.S. at 466; *see also Ewald v. Citizens Fidelity Bank & Trust Co.*, 242 F.2d 319, 321 (6th Cir. 1957) (holding that requests for accounting and removal of trustee constituted quasi-in rem action); *Shaw v. Interstate Bank of Wisconsin*, 695 F. Supp. 995, 1000 (W.D. Wis. 1988) (listing classic components of dispute over trust administration: removal of trustees, appointment of new trustees, accounting and restoration of funds to trust).

145. Neither *Dailey* nor *Bathgate* should be considered in personam. In *Southwestern Bank & Trust v. Metcalf State Bank*, the only relief sought was money damages against the trustee mitigating against the application of the *Princess Lida* doctrine. 525 F.2d 140, 142 (10th Cir. 1975). The Tenth Circuit stated that the key difference between *Princess Lida* and *Southwestern* was that in *Southwestern*, removal of the trustee was not requested. *See id.* at 143. *Dailey* also differs from *Southwestern* because removal of the trustee was sought in *Dailey* and no personal liability of the trustee was asserted. For examples of other in personam actions, see *supra* note 61.

146. *Dailey*, 780 F. Supp. at 268. Chief Judge Gerry of the United States District Court for the District of New Jersey stated:

Given the current posture of the two lawsuits, however, it seems virtually certain that a decision will be rendered in the Canadian action well before this court has reached a stage at which we could consider ordering relief. We will therefore have the benefit of knowing what relief has been ordered by the Canadian court and we will be able to tailor our own order accordingly.

Id.

147. *See Dailey*, 987 F.2d at 177 n.4. On February 17, 1994, the Ontario Court of Appeals affirmed the Ontario Court of Justice's *Bathgate* ruling. *Bathgate v. Na-*

there was no reason for a United States decision if the United States court was predetermined to follow the Canadian decision.¹⁴⁸

For comity reasons, the Third Circuit correctly expanded the application of the *Princess Lida* doctrine to foreign courts.¹⁴⁹ In *Chesley v. Union Carbide Corp.*,¹⁵⁰ the Second Circuit applied the *Princess Lida* doctrine to a case involving a foreign court.¹⁵¹ In *Dailey*, comity is especially important because the other foreign jurisdiction involved is Canada.¹⁵² The plaintiffs would not suffer if *Dailey* was dismissed,¹⁵³ therefore, the district court should defer to Canada "in a spirit of international cooperation."¹⁵⁴ Because the actions in both *Dailey* and *Bathgate* were quasi-in rem and due to the overriding concern in extending comity to the Canadian court, the Third Circuit correctly dismissed the plaintiffs' complaint in *Dailey*.

B. Loss of ERISA Protections

The loss of the plaintiffs' ERISA claims should not affect the applicability of the *Princess Lida* doctrine. *Levy* is distinguishable from *Dailey* because *Levy* did not address ERISA claims in a *Princess Lida* context.¹⁵⁵ Furthermore, the federal court in *Levy* preempted all state common law claims because the other court was a state court and not a foreign court.¹⁵⁶ While preemption prevents state

tional Hockey League Pension Society, No. C13737, 1994 Ont. C.A. LEXIS 43 (Ont. C.A. Feb. 17, 1994); *NHL Must Pay Ex-players Millions in Pension Money*, PHILA. INQUIRER, Feb. 18, 1994, at D3. The NHL is considering taking further action in the Canadian courts. See *id.*

148. Even though the district court would not be bound by the Ontario Court of Justice, under the district court's "pragmatic" approach, it would have to rule according to the Canadian court in order to avoid conflicting orders.

149. See *Dailey*, 987 F.2d at 175-76. In *Fleeger v. Clarkson Co.*, 86 F.R.D. 388, 392 (N.D. Tex. 1980), the court stated that "[t]he rationale for comity dismissals is not based simply on lack of familiarity with the particular foreign law, but rather is in deference to the foreign country's legal, judicial, legislative, and administrative system of handling disputes over which it has jurisdiction."

150. 927 F.2d 60 (2d Cir. 1991). For a discussion of *Chesley*, see *supra* notes 79-81 and accompanying text.

151. *Chesley*, 927 F.2d at 66. Judge Alito incorrectly asserted that the majority viewed *Chesley* as requiring automatic dismissal of an action brought in federal court if an action was already brought in a foreign court. See *Dailey*, 987 F.2d at 179 n.2 (Alito, J., dissenting). The majority cited *Chesley* as an example of how the *Princess Lida* doctrine was applicable in a case involving a foreign court. See *id.* at 175-76.

152. See *Fleeger*, 86 F.R.D. at 393 (stating that if court cannot extend comity to Canada, comity principle has little vitality in American jurisprudence).

153. See *infra* notes 41, 43 and accompanying text.

154. *Fleeger*, 86 F.R.D. at 392.

155. See *Dailey*, 987 F.2d at 178.

156. See *Levy*, 635 F.2d at 967; see also ERISA, 29 U.S.C. § 1144 (1988) (ERISA preemption provision). For a discussion of ERISA preemption, see David Gregory,

courts from hearing plaintiffs' claims, it does not preclude a foreign court from adjudicating a parallel claim and providing the same types of relief.¹⁵⁷ Also, the ability to try an ERISA claim will not have any effect if the decision conflicts with the Canadian court.¹⁵⁸

Canadian pension law may be less favorable to the retired NHL players because Canada does not have a law equivalent to ERISA.¹⁵⁹ However, the holding in *Piper* allows a court to dismiss an action even though the law in the alternative forum is less favorable to the plaintiff.¹⁶⁰ Although *Piper* involved forum non conveniens, it still applies to *Dailey*.¹⁶¹ If a federal court may dismiss an action using a discretionary doctrine such as forum non conveniens, it must dismiss an action under a compulsory doctrine like *Princess Lida*.¹⁶² The plaintiffs were not unfairly prejudiced by the loss of their ERISA claims because the Canadian courts provide an adequate forum.

The Scope of ERISA Preemption of State Law: A Study in Effective Federalism, 48 U. PITT. L. REV. 427 (1987); Leon E. Irish & Harrison J. Cohen, *ERISA Preemption: Judicial Flexibility and Statutory Rigidity*, 19 U. MICH. J.L. REF. 109 (1985).

157. See Brief for Appellants at 24, *Dailey v. National Hockey League*, 987 F.2d 172 (3d Cir.) (No. 92-5156), cert. denied, 114 S. Ct. 67 (1993). Congress' intent would not be frustrated by the plaintiffs' loss of the ERISA claims because Congress was concerned with problems of state common law claims, not of foreign claims. See H.R. REP. NO. 533, 93d Cong., 2d Sess. 17 (1973), reprinted in 1974 U.S.C.C.A.N. 4639, 4655.

158. Because the district court would not have issued a conflicting order, any advantage the plaintiffs would have had by being able to try their ERISA claims would have been negated if it resulted in an order that conflicted with the Canadian court's order.

159. However, Canadian pension law does not appear to be less favorable to the plaintiffs because the Ontario Court of Justice granted virtually all of the relief requested by the plaintiffs. See *Bathgate*, 1992 Ont. C.J. LEXIS 1830, at *186-89.

160. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 238 (1981). In *Piper*, the alternative jurisdiction was less favorable to the plaintiffs because they were unable to pursue a strict liability claim in Scottish courts. *Id.*

161. See *Dailey*, 987 F.2d at 178.

162. See *id.* at 178-79. In *Fleeger*, the district court stated that "even if Canadian law did not supply the substantive cause of action, [it] would still hesitate to take jurisdiction." *Fleeger v. Clarkson Co.*, 86 F.R.D. 388, 393 (N.D. Tex. 1980). The court noted that the plaintiff voluntarily purchased shares in a Canadian corporation, thereby putting him on notice that his shareholder rights would be construed according to Canadian law. *Id.* For a discussion of *Fleeger*, see *supra* notes 115-18 and accompanying text.

Likewise, the NHL Plan contains a choice-of-law provision stating that the agreement should be construed according to the laws of Canada and its provinces. See Brief for Appellants at 8, *Dailey v. National Hockey League*, 987 F.2d 172 (3d Cir.) (No. 92-5156), cert. denied, 114 S. Ct. 67 (1993). Therefore, the plaintiffs in *Dailey* should have been on notice that their rights would be construed according to Canadian law.

VI. IMPACT

In *Dailey*, the *Princess Lida* doctrine prevailed over Congress' statutory determination that federal courts have exclusive jurisdiction to hear claims involving ERISA violations. Congress has no authority to order a foreign court to exercise or withdraw jurisdiction.¹⁶³ Thus *Dailey* exploits a loophole in ERISA's exclusive jurisdiction provision: if plaintiffs bring a quasi-in rem action in a foreign court first, a federal court will not be able to exercise jurisdiction if a subsequent quasi-in rem action is brought involving the same trust property.

Dailey holds an important place in pension law. *Dailey* forces employees who are able to file suit in more than one country to consider whether they wish to seek relief under ERISA. If employees wish to allege violations of ERISA, they must file suit in a United States district court before any other filings to prevent dismissal on *Princess Lida* grounds. The United States District Court for the Eastern District of Pennsylvania has already dismissed such a case based on *Dailey*.¹⁶⁴ Therefore, athletes and employees must be careful to preserve federal jurisdiction by filing in a United States district court before any other filings.

By declining to exercise jurisdiction, the Third Circuit accepted the proposition that comity is more important than ensuring exclusive federal jurisdiction. The Third Circuit made the correct decision because the implications of violating comity reach far wider than denying the plaintiff a claim where adequate relief already exists.¹⁶⁵ As long as the law of the foreign jurisdiction is not wholly inadequate, other jurisdictions should not hesitate to follow *Dailey* and defer to the foreign court.

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163. See Brief for Appellants at 24, *Dailey v. National Hockey League*, 987 F.2d 172 (3d Cir.) (No. 92-5156), *cert. denied*, 114 S. Ct. 67 (1993).

164. See *Asbestos Workers Local 14 v. Hargrove*, No. CIV.A.93-0728, 1993 WL 183990, at *4 (E.D. Pa. May 25, 1993). The district court dismissed the case even though "important federal policies and laws" were involved. *Id.* at *5.

165. A plaintiff could avoid losing ERISA claims by filing first in the United States. See *Penn Gen. Casualty Co. v. Pennsylvania ex rel. Schnader*, 294 U.S. 189, 195 (1935).

